

## **Statewide Ecological Extinction Task Force Minutes**

**Tuesday, September 12<sup>th</sup>, 2017**

**1:00 p.m. – 2:05 p.m.**

**Senate Hearing Room, Legislative Hall**

**Amended**

**Monday, October 16<sup>th</sup>, 2017**

### **Meeting Attendance**

#### **Task Force Members:**

##### **Present:**

Senator Hansen  
Senator Richardson  
Representative Gray  
Douglas Tallamy  
Sarah Cooksey  
Katherine Holtz  
Maria Evans  
Matthew Sarver  
Robert Thornton  
Joseph Rogerson  
Michael Petit De Mange\*  
Michael Costello  
Susan Barton  
Faith Kuehn  
*\*Represented by Kris Connelly*

##### **Email:**

Stephanie.Hansen@state.de.us  
Bryant.Richardson@state.de.us  
Ronald.Gray@state.de.us  
Dtallamy@udel.edu  
Sarah.Cooksey@TNC.org  
kthholtz@aol.com  
Maria@delawarerealtor.com  
Matt@matthewsarver.com  
Silverstok@aol.com  
Joseph.Rogerson@state.de.us  
Michael.Petitdemange@co.kent.de.us  
Michael.Costello@sussexcountyde.org  
Sbarton@udel.edu  
Faith.Kuehn@state.de.us

##### **Present (Conference call):**

Kathy Stiller  
Representative Heffernan\*  
*\*Represented by Hadey Salem*

Kstiller@brightfieldsinc.com  
Debra.Heffernan@state.de.us

##### **Absent:**

Chris Bason  
James White

Chrisbason@inlandbays.org  
Jim@delawarenaturesociety.org

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Minutes prepared by Jennifer Parrish, Legislative Assistant & Ashley Kennedy, Task Force Assistant

Tracy Surles

Tnsurles@nccde.org

**Staff:**

Jennifer Parrish, Legislative Assistant  
Ashley Kennedy, Task Force Assistant

Jennifer.Parrish@state.de.us  
Kennedy@udel.edu

**Attendees:**

Howard Fortunato  
David Rickards  
Jim McCulley  
C. Scott Kidner  
Dave Carey  
Shauna Thompson  
Chris Klarich  
Verity Watson  
Hannah Greenberg  
Amy Highland

**Organization:**

HBADE  
Birdsong Gardens  
HBADE  
Pemberton Branch  
Pemberton Branch  
Pemberton Branch  
Delaware Nature Society  
HBADE  
Delmarva Ornithological Society  
Mount Cuba Center

**The Task Force meeting was brought to order promptly at 1:00 p.m.**

**Introduction**

Senator Hansen brought the meeting to order and introduced herself. She then invited all other attendees to introduce themselves and reminded them to sign in. The Task Force took a moment to look over the minutes from the August 23<sup>rd</sup> meeting and approved them. Senator Hansen then introduced the speaker for this meeting, Jim McCulley from the Home Builders Association of Delaware.

**Presentation by Jim McCulley**

Jim McCulley began his presentation, “Natural Resource Preservation Incentive Concept”, at 1:03. He explained that the HBA has been thinking about this subject for a long time and that while it may not work in every case, it is one tool that can be added to the toolbox to try to preserve natural resources. He started by outlining several basic concepts that he hoped everyone present could agree on: valuable environmental resources need to be protected, these resources have tremendous value to the public, and unfortunately, these resources have little to no value to the landowner.

Mr. McCulley continued with a case study which took place in Sussex County, specifically, the Peninsula in Indian River Bay, which was developed about 10 years ago. The developer, who hired Mr. McCulley to do environmental work for the development, planned to develop a 1000-

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acre property, of which about 200 acres were noted as the best loblolly pine forest in Delaware according to Lorraine Fleming's book *Delaware's Outstanding Natural Areas and Their Preservation*. When Mr. McCulley alerted the developer to the presence of this valuable pine forest, the developer quickly agreed to work with it to keep it intact; however, when Mr. McCulley went to the site, the pines had already been cut down by the landowner, who felt that they decreased the value of his property.

Mr. McCulley shared another example from his personal experience, involving work he did for the Navy about 15 years ago. Congress had dictated that every federal facility with natural resources had to do an Integrated Natural Resources Management Plan (INRMP), so Mr. McCulley was hired to do a study at the Patuxent Naval Air Station. About 2000 acres of a 7000-acre property was developed. Another 3000 acres on the property was an old-growth forest. About six months after writing the report for the base, Mr. McCulley returned to the site and noticed that all the old-growth forest had been cut down so it would not be included in the INRMP, likely due to concerns that it could be an impediment to expanding the base in the future. This case, like the first, illustrated the point that even valuable natural resources are perceived as having little to no value by the landowner. He noted that the problem inherently lies not with the developer, who will map natural resources and put them on a plan to protect them, but with the landowner, who knows that increasing the number of lots on their property will increase its value. This raises the question of how we can provide value to the landowner.

Mr. McCulley said that another tool in our toolbox came out with an EPA study on "Protecting Water Resources with Higher-Density Development" (EPA, 2006). By working with landowners who plan to sell to a developer, or who plan to sell density credits, we could say that if you have natural resources on your property and you want to protect them, you can get a density bonus on your site or another site. The idea is that the higher the value of the resource, the bigger the bonus you would get, so there is more incentive to protect the resource. He provided a possible scenario in which Category 1 (Highest Value) would be a 4x density bonus, Category 2 (High Value) would be a 3x density bonus, Category 3 (Typical) would be a 2x density bonus, and Category 4 (Disturbed) would be a 1x density bonus. Mr. McCulley explained that in this scenario, you would have landowners trying to prove that they have high-quality natural resources on their property so they can get a good credit, instead of cutting down their loblolly pine forest before anyone else can discover it. The landowners could sell the credits in exchange for easements or provide incentives outside of growth areas for important resources.

He continued with an example of a fictitious 100-acre property with some rare species, forests, and wetlands on it and explained how it would typically get developed. A developer would typically get a permit to fill the drainage, cut down the non-wetland forest, and build 3 units per acre, for a total of 300 single-family homes. In Mr. McCulley's scenario, the property would have 4.56 units per acre for 456 total units, including multi-family homes, townhomes, and single family homes, and the natural resources would be protected because of the bonuses.

Mr. McCulley went on to explain the cost, saying that you would not need money to pay people to protect these resources in this scenario, but you would need three other things to happen: the public would have to accept a higher density, buyers would have to want to buy into higher-density development, and builders would have to want to build higher-density development. Mr. McCulley feels that the builders would be on board and agree that the need for this kind of development exists, but the challenge lies in getting the public to accept it. He showed some graphics from the EPA report which illustrated that increasing the density allows you to protect more land within a watershed. He explained that currently, 4 units per acre is considered high-density, but in reality, this is sprawl, taking up more land than we need, so the aim is to provide developments with up to 8 units per acre. Mr. McCulley added that although 8 units per acre may sound unusually high to some people, there are certain demographics (e.g., the elderly, millennials) who would like to live this way, but the opportunity to do so is not currently provided.

## **Discussion**

Mr. McCulley opened the floor to discussion.

Robert Thornton (HBA) said that he thinks this approach would work, and if we adopt it gradually then we can learn which parts work the best.

Mr. McCulley reiterated that many landowners may have important resources on their property but don't want anyone to know about them, because the resources decrease the property value, whereas if the resources increased their property value, the landowners would want to protect them. He added that land use is a county decision, so counties and municipalities would have to agree to a concept like this, but we also have a State Planning Office which could play an important role in taking this concept and working it into comprehensive plans.

Susan Barton (Delaware Landscape and Nursery Association) shared a story from her sister's experience. Her sister bought land in Pennsylvania, and according to rules there, every tree she took down on her property had to be replaced, even though most of the ones she removed were Norway maples, an invasive exotic species that we should be encouraging people to remove. The other trees she removed were in very poor condition, but she was required to replace them with expensive trees. She said that this example shows that some rules are made by people who don't understand the biology behind them, and cautioned that we need to be careful not to do something that winds up being the opposite of what we want it to be.

Matthew Sarver (Delmarva Ornithological Society) asked how we would go about evaluating public resources and rare species.

Mr. McCulley responded that the more valuable the resource, the bigger a density bonus you should get, because you're preserving something that's more important to the public and should be rewarded accordingly. He said the details would largely be up to DNREC and the counties

because land use decisions are at the county-level, and DNREC would be responsible for setting the criteria, i.e., establishing what resources are most important.

Dr. Barton said there needs to be someone in the decision-making role who understands the value of the land properly, so they can best assess what the valuable resources are.

Mr. McCulley responded that we already have this as part of the PLUS (Preliminary Land Use Service) process, which denotes what types of species and habitats are present, but landowners are getting rid of the resources before it comes to that process and before selling to the developer because the resources decrease the value of the property. He said that if we value certain resources, those resources should add value to property or landowners will simply get rid of them.

Faith Kuehn (Department of Agriculture, Plant Industries) noted that with higher density development scenarios, you might also need more roadways, more waste management, more support services, etc. and asked how that could be balanced.

Mr. McCulley responded that when you eliminate sprawl and increase density, the price of those services goes down because the services are now concentrated, and agreed that the high-density scenarios would only work in the growth zone, where there is adequate infrastructure to handle increased density.

Matthew Sarver asked about the stormwater and septic implications of density increase.

Mr. McCulley responded that higher-density development is only possible in the growth zone, and commented that 8 units per acre wouldn't work with septic or well water. He said that this is why there needs to be a mechanism for transferring the density bonus to an area where the infrastructure is there to support it.

Robert Thornton noted that, in his experience, moving toward higher-density development would not have any adverse effects on infrastructure.

Mr. McCulley followed up by adding that in Mr. Thornton's project, Mr. Thornton had successfully preserved a large portion of forest areas by concentrating all the development in one area. This entailed going through a zoning process that many people won't go through because it's not by right.

Senator Hansen invited Sussex County members of the Task Force to add their comments.

Representative Gray said that the environmental benefit is apparent, and asked if developers will be able to market higher-density development. He also asked how we would put together a group to evaluate finding a balance between preserving the resources we want to preserve without restricting the use of resources we don't want to preserve.

Mr. Thornton said that you can't take a 100-unit property and fit 900 units on it, but somewhere there's a happy medium that would not adversely affect infrastructure. He said that if he were to

guess at that equation, it would not be double but might be between 30-65% increased density, where the development would still be marketable and the infrastructure would be okay. He added that the market has changed in just the past ten years, for example, millennials like high-density, mixed-use communities that would not have been as popular ten or fifteen years ago.

Senator Richardson said that he would hate to see us get to the point where we dictate exactly what the homeowner can and cannot do on their property. He said he would like to avoid taking away private property rights and increasing expenses for the homeowner and would rather make this an educational process, leaving some choices to the discretion of the property owner.

Maria Evans (Delaware Association of Realtors) urged caution, indicating that high-density, mixed-use community development will not work everywhere; for example, it would not work as well in Sussex County).

David Rickards (Member of public; Birdsong Gardens) spoke about the possibility of compensating farmers for loss of farmland, and reiterated Ms. Evans' point that there are places where high-density development likely would not work.

Senator Hansen said that the Task Force is considering different approaches to this problem, and that a punitive approach (such as imposing fines or penalties for removing loblolly pines, for example) likely will not work because it goes against private property rights. She went on to say that another approach would be to recommend to the Office of State Planning that they, in turn, recommend to counties and municipalities that their plans encourage people to work outside of sensitive natural areas. This approach would allow local decision-makers to make decisions, but with guidance from our task force and the state.

Mr. McCulley said that typically, developers hire someone like himself to map the resources on the property and ideally show the minimal amount of resources possible. This would dramatically change the way things are done, such that developers would want to show the most resources possible. He said it would be better if he were arguing with DNREC that a site was more valuable and DNREC arguing that it was less valuable than the other way around, which is too confrontational.

Ms. Evans asked what would happen if a property owner had their resources mapped out and then decided not to sell the property for development; i.e., what would happen with the information that was gathered.

Mr. McCulley responded that the property owner in that scenario could take their density bonuses and sell them to someone else, which would increase their value. He explained that, regarding what happens with the data, the same outcome would occur that happens now: essentially, if the report has been submitted to the county, then there would be a public record of it, but otherwise, it would be the property owner's private information.

Douglas Tallamy (University of Delaware) said that it would be better if the homeowner does not have to sell their property to realize the benefits; there ought to be some incentive to preserve natural resources that benefit everybody without selling. He went on to say that if you have old-growth forest on your property, it is sequestering carbon, it is managing the watershed, and benefiting everyone in Delaware, and you should be compensated for that. He concluded that right now, we don't have any monetary value on these resources, but we need to have some way to value them, which will be a big cultural change.

Mr. Sarver noted that he will provide a more comprehensive list of recommendations soon. He added that currently there is no real way for landowners to get support for species and habitat management.

Senator Hansen reminded the Task Force that the money (e.g., to provide incentives or implement a new program) has to come from somewhere, and that, in order to be effective as a Task Force, we should go a step further than saying we need money and explain how we are going to come up with it.

Dr. Kuehn said that we want people to make these changes because they understand what's at stake and understand the value that resources are providing. She provided an example from a senior living development in Magnolia, which had put in a golf course and meadow, but the development next door to it did not like the meadow for various reasons (e.g., fear that it harbored snakes as well as a general concern that it looked messy). She said it is critical that people see the value of natural resources.

Senator Hansen then invited Task Force members to look at the compiled list of recommendations provided by members on behalf of their organizations and her summary thereof, and asked members to send in any additional recommendations that were not already represented in this document by the next meeting. She commented that there was some overlap between recommendations, so in the document, she consolidated these into the top six recommendations, enumerated as follows: 1) education of the public, 2) incentivizing landowners, 3) government leading by example, 4) legislation affecting development, 5) funding the open space program at the statutory level, and 6) legislation to prohibit the sale of invasive species. She added that she planned to have an intern research what plants are being sold in various stores and nurseries to investigate how bad the problem is, i.e., what percentage of plants being sold are non-native or native, so that we have a better idea of how long the process of phasing them out would realistically take.

Amy Highland (Mount Cuba Center) mentioned that Mount Cuba Center recently did a study of that nature and would be willing to provide the information they gathered.

Mr. Thornton noted that an additional problem beyond the plants' origin is whether they have been treated with harmful pesticides; even a native plant could do harm if it is treated with poisonous substances.

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Dr. Tallamy said that plants treated with pesticides in a greenhouse setting would not be permanently affected. He added that there is a lot of pressure to use natural enemies in lieu of pesticides, but in his opinion, the pesticide issue is not as important as we make it out to be.

Senator Hansen said that moving forward, the next steps are to identify the recommendations that have the support of the majority of the Task Force and adding more specific recommendations within each one.

Dr. Barton commented that Senator Hansen did an excellent job distilling the detailed lists of recommendations that were provided into several succinct items. She added that we will need to add a certain level of detail back to the recommendations to make sure we're talking about the same thing; for example, lawn should not be considered productive open space.

Senator Hansen agreed that we should start with a low number of broad categories so that we can add greater detail to each one. She commented that one of the recurring points we've seen during these meetings is that we all have a part to play, that what we (not just those sitting here, but everyone) are doing in our own backyards plays a role in species extinctions. She added that this is actually empowering to know that individuals can effect change on this issue.

Mr. Sarver said that a lot of natural resource concerns have been historically greatly underfunded because the value is not well articulated, so monetizing some of the services and benefits of natural resources to communities may help make our argument in that context and potentially justify budget items. He concluded that this could be something that the task force helps to articulate to legislators and constituents.

Senator Hansen encouraged task force members to look through the list of recommendations and ensure that it properly encapsulates what their organization wanted to communicate. After conferring with Task Force members, she set the date and time of the next meeting for Thursday, October 5<sup>th</sup> at 1:00 p.m.

**The meeting was adjourned at 2:05 p.m.**